

**RECEIVED**

**Jul 12 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Marlboro County

Honorable Paul M. Burch, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ANTONIO ANDERSON,

APPELLANT

APPELLATE CASE NO. 2023-001257

---

INITIAL BRIEF OF APPELLANT

---

ROBERT M. DUDEK  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....3

ARGUMENT

The court erred by refusing to instruct the jury on self-defense, reasoning that *State v. Lockamy*, 369 S.C. 378, 631 S.E.2d 555 (2006) controlled, and that appellant could have retreated to avoid the danger where the decedent was a much larger man who had terrorized and threatened appellant with physical harm for a long time, was doing so again at the time of the fatal encounter, and where appellant was reasonable to think the aggressive, larger decedent may have been armed during the fatal encounter. ....4

**Introduction**.....4

**Relevant facts** .....4

**The state’s case in chief** .....9

**Request to charge**.....11

**Discussion**.....13

CONCLUSION.....17

## TABLE OF AUTHORITIES

### **Cases**

<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006).....	3
<u>State v. Day</u> , 341 S.C. 410, 535 S.E.2d 431 (2000).....	14, 15
<u>State v. Fuller</u> , 297 S.C. 440, 377 S.E.2d 328 (1989).....	13, 15
<u>State v. Hardin</u> , 114 S.C. 280, 103 S.E. 557 (1920) .....	13
<u>State v. Harvey</u> , 220 S.C. 506, 68 S.E.2d 409 (1951).....	13
<u>State v. Hendrix</u> , 270 S.C. 653, 244 S.E.2d 503 (1978) .....	13
<u>State v. Hendrix</u> , 270 S.C. 653, 244 S.E.2d 503 (1978) .....	12, 13, 14
<u>State v. Jackson</u> , 227 S.C. 271, 87 S.E.2d 681 (1955).....	13
<u>State v. Light</u> , 378 S.C. 641, 664 S.E.2d 465 (2008).....	3, 15
<u>State v. Lockamy</u> , 369 S.C. 378, 631 S.E.2d 555 (2006) .....	passim
<u>State v. Mason</u> , 115 S.C. 214, 105 S.E. 286 (1920) .....	13
<u>State v. Muller</u> , 282 S.C. 10, 316 S.E.2d 409 (1984) .....	15
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	3

## **STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by refusing to instruct the jury on self-defense, reasoning that State v. Lockamy, 369 S.C. 378, 631 S.E.2d 555 (2006) controlled, and that appellant could have retreated to avoid the danger where the decedent was a much larger man who had terrorized and threatened appellant with physical harm for a long time, was doing so again at the time of the fatal encounter, and where appellant was reasonable to think the aggressive, larger decedent may have been armed during the fatal encounter?

## STATEMENT OF THE CASE

Appellant was indicted at the December 5, 2017, term of the Marlboro County grand jury for the offenses of murder, and possession of a weapon during the commission of a violent crime. R. p. \*. His case was called to trial on July 24, 2023, before the Honorable Paul M. Burch and a jury. Grant Smaldone represented appellant. Elizabeth Munnerlyn was the solicitor. Tr. 1.

On July 26, 2023, the jury found appellant guilty of voluntary manslaughter and possession of a weapon during the commission of a violent crime. Tr. 249, ll. 2-13. Judge Burch sentenced appellant to twenty-one years imprisonment for voluntary manslaughter and he imposed a five-year concurrent sentence for the weapons charge. Tr. 259, l. 21 – Tr. 260, l. 2.

This appeal follows.

### STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court “is bound by the [circuit] court's factual findings unless they are clearly erroneous.” Id. Appellate courts do not re-evaluate the facts based on their own view of the preponderance of the evidence but simply determine whether the [circuit court]'s ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). If there is any evidence of self-defense in a case, the trial court is obligated to charge self-defense to the jury. State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008).

## ARGUMENT

The court erred by refusing to instruct the jury on self-defense, reasoning that *State v. Lockamy*, 369 S.C. 378, 631 S.E.2d 555 (2006) controlled, and that appellant could have retreated to avoid the danger where the decedent was a much larger man who had terrorized and threatened appellant with physical harm for a long time, was doing so again at the time of the fatal encounter, and where appellant was reasonable to think the aggressive, larger decedent may have been armed during the fatal encounter.

### **Introduction**

Appellant and the decedent had been friends for years. However, the state's theory of the case was that when the decedent went to prison, appellant became sexually involved with his girlfriend, Jessica Roller. The defense presented numerous witnesses who testified that after the decedent was released from prison he threatened and terrorized appellant in the months leading up to the fatal encounter at the Stop-N-Shop in McCall, South Carolina.

### **Relevant facts**

Renee Cummings was appellant's former girlfriend. Tr. 124, l. 15 – Tr. 125, l. 24. Renee remembered that appellant actually went and picked up the decedent when he was released from prison, "and then something happened, and everything went haywire." Tr. 126, ll. 1-11.

Renee testified that appellant was a mechanic, presently working for himself, and he worked on cars in an outbuilding in his mother's backyard. The decedent was the neighbor of appellant's mother. While Renee and appellant were at his mother's house, the decedent would yell at them "cussing and carrying on with Antonio [appellant] at his mom's house." Tr. 127, ll. 3-10. Renee remembered, for example, that the decedent would yell: "I'm going to 'F' your girlfriend." Tr. 127, ll. 12-19.

Renee recalled another occasion where appellant was trying to work and the decedent was “showboating with a bunch of friends, he’s going to ‘F’ him up, he’s going to do this, he’s going to do that, until one day we came home - - I came home, Antonio was standing in the door, Alonzo [the decedent] had a couple of guys out there and he was going to do this, and he was going to do that, and he had a gun. I called Nunni [appellant’s bother, John] at work, I said Nunni, I need you to come, I need you to come.” Tr. 129, ll. 6-22.

Renee testified that she got the police involved in this instance because the decedent was threatening to shoot appellant. Tr. 131, ll. 9-16. Renee had seen the decedent with a gun, so she took his threats against appellant very seriously. Tr. 131, l. 23 – Tr. 132, l. 2. As will be seen infra, the decedent was not subtle about his love of guns, posting photographs of assault rifles online.

Teri Anderson was appellant’s mother. She confirmed the decedent was her neighbor. Teri testified that the decedent had recently gotten out of prison and the trouble started when he returned home from prison. Tr. 140, l. 15 – Tr. 142, l. 23.

Teri remembered that around March 20, 2017 - - the shooting ultimately occurred about five months later on August 21, 2017 - - she saw the decedent pick up a cinder block during an argument while appellant was working on his brother’s car. Teri recalled the decedent threatened to kill appellant and appellant ran and got his gun. Appellant then purchased “no trespassing” signs which were posted on her property in an attempt to keep the violent decedent at bay. Tr. 143, l. 12 – Tr. 147, l. 16.

John Anderson, appellant’s brother, testified that appellant was not a violent person. Conversely, the decedent had a bad reputation in the community for violence and turbulence. Tr. 188, l. 2 – Tr. 189, l. 17. John identified Facebook messages where the decedent was trying to

sell guns on Facebook. These included an assault rifle, or a SKS, that the decedent was trying to sell John on July 16, 2017. Again, the shooting in this case occurred five weeks later, August 21, 2017. Tr. 190, l. 14 – Tr. 191, l. 13. John showed the Facebook posting with the assault rifles on it to appellant. Tr. 191, l. 14 – Tr. 192, l. 12.

Appellant took the stand in his own defense. He had finished the eleventh grade at Marlboro County High School. Tr. 149, ll. 1-4. Appellant worked as a mechanic in the Bennettsville area. He was married with six children. Tr. 149, ll. 11-23.

Appellant had known the decedent for ten to twelve years. In fact, the decedent's mother and father paid him to drive to Turbeville Correctional Institution to pick up the decedent when he was released from prison in March of 2017. "Once he got home, he was different." Tr. 150, ll. 1-23.

Appellant remembered being at an apartment complex one day when he spotted the decedent running around an apartment building, and he heard two gunshots. "He just liked to scare people, that's basically like the type of person [he] is." Tr. 151, ll. 9-20. Appellant testified that the decedent enjoyed frightening him and that the violent incidents continued until they became "every other day, at least once a week." Tr. 151, l. 9 – Tr. 153, l. 1.

Since these threats involved guns, appellant feared for his life. Tr. 153, ll. 2-16. Appellant related that the decedent would also send him annoying and harassing text messages. Tr. 154, l. 18 – Tr. 157, l. 14.

Appellant described one incident where he went to a steakhouse in Dillon, South Carolina, with his mother and brother. A white truck started following them which he thought the decedent was driving or a passenger in because he saw the decedent near the white truck three days later holding a long assault rifle. Appellant noticed a long assault rifle being pointed

out of the window of this white truck that night as he sped away from it. *“I seen two flashes coming at me so I ducked down and I hit the gas real hard. . . .”* Tr. 156, l. 11 – Tr. 157, l. 23. (emphasis added). Appellant testified this was the night before the shooting happened at the Stop-N-Shop.<sup>1</sup> Tr. 157, ll. 16-23.

Appellant also identified another of the decedent’s Facebook posting which had an assault rifle, two pistols, in addition to four clips and bullets on it. Tr. 162, ll. 12-25. The Facebook posting said: “Strapped, them signs don’t mean nothing.” Tr. 163, ll. 4-7. Appellant explained that the decedent was referring to the “no trespassing” signs that he had posted to keep the decedent off of his mother’s property. This post was dated June 24, 2017. Tr. 163, l. 4 – Tr. 164, l. 14. Photographs of these postings, Defendant’s Exhibits 1-3, are on file with this Court for viewing.

Appellant also identified another text where the decedent was “writing in gang language and referring to ‘shit into Call of Duty...’” Appellant testified that Call of Duty was a shooting game and appellant interpreted this message to mean that the decedent was going to shoot and kill him. Tr. 164, l. 20 – Tr. 165, l. 9.

Appellant explained that the decedent continued to harass him and to follow him. The decedent tried to run him off the road when he was driving. All of this caused appellant to move his work to McCall but the decedent “followed me down there.” Tr. 167, l. 22 – Tr. 169, l. 5.

Appellant said on the fatal evening he went to the Stop-N-Shop to purchase a drink and potato chips. He had never seen the decedent at the Stop-N-Shop before that night. Tr. 169, ll. 8-20.

---

<sup>1</sup> On another occasion during direct examination, it appeared appellant said this incident was “reported” to the police about a month before the shooting. Tr. 157, l. 16 – Tr. 160, l. 12.

Appellant went inside the store and “all I heard was fuck and gun, I turned around and asked him [the decedent] what - - first we made eye contact. You know, Alonzo, you already know how he is, that’s just how he is.” Tr. 170, ll. 2-6.

Appellant said he felt threatened while at the store, and he thought he was in danger of being killed by the decedent. Appellant repeatedly testified: “I didn’t know what he had.” Appellant was therefore scared for his life. Tr. 170, l. 2 – Tr. 171, l. 22. Appellant confirmed that the decedent weighed almost one hundred pounds more than he did, and he also knew the decedent carried a gun. “*Every time he come [came] at me he have [had] a gun,*” and appellant admitted he “was scared” of the decedent. Tr. 172, ll. 2-23. (emphasis added. A police investigator testified the decedent was six-foot one inch and weighed two-hundred sixty pounds. Appellant was only five foot six inches tall, and he weighed one-hundred seventy-five pounds. The decedent was a very physically fit individual as the surveillance tape, State’s Exhibit 8, reveals. Tr. 109, ll. 7-17. State’s Exhibit #8, and it is on file with this Court for viewing.

This surveillance tape of the confrontation at the Stop-N-Shop store and the shooting was admitted into evidence and shown to the jury. The tape showed the shooting occurred outside as appellant got a gun from inside the driver’s door with the decedent nearby with his car right next to appellant’s car. Appellant repeatedly reiterated that the decedent had threatened to kill him, the decedent had guns with which to carry out his threats, and the decedent carried a gun. Again, appellant did not know what weapon the decedent might have had with him at the Stop-N-Shop that night but he had reason to believe the decedent had a gun. Tr. 172, ll. 6-23; Tr. 173, ll. 16-24; Tr. 174, ll. 2-11; Tr. 180, l. 23 – Tr. 181, l. 4.

### **The state's case in chief**

McCall police officer Scott Bowen remembered being dispatched to the shooting at the Stop-N-Shop at about 10:20 p.m. on August 21, 2017. Tr. 40, ll. 2-24. Bowen knew appellant from seeing him around McCall. When Bowen pulled into the Stop-N-Shop parking lot, appellant approached his police car and placed his 9-millimeter handgun on the hood of his car, and raised his hands. Bowen handcuffed appellant without incident. Tr. 46, ll. 11-18. All of this is contained on the surveillance tapes on file with this Court, State's Exhibit #8. Tr. 41, ll. 3-20.

Kimberly Williams was working the cash register at the Stop-N-Shop that evening. Tr. 47, l. 21 – Tr. 48, l. 1. Kimberly knew appellant before the incident in this case. Tr. 48, ll. 9-10. Kimberly remembered that appellant came in that night and got a bag of potato chips and a Minute Maid orange juice. Tr. 49, ll. 11-14.

Kimberly recalled that the decedent then entered the store “and it just went from there. I don't know who said what first or nothing, I just know they started arguing . . . I called May from the back to come and try to calm them down and to get them out of the store.” Tr. 49, ll. 11-25.

May was able to get the decedent and appellant to leave the store. Appellant “proceeded to pay for his stuff and then he left out.” Tr. 50, ll. 15-16. Kimberly said that although the men squared off against each other, no punches were actually thrown or landed. Tr. 50, l. 12 – Tr. 51, l. 5. Kimberly said that the surveillance tape, State's Exhibit #8, accurately portrayed what occurred that evening. Tr. 51, ll. 20-25.

Sara Milligan was the decedent's girlfriend. She met him at the Ashlyn Apartments in McCall when he was living with his former girlfriend, Jennifer Roller. Milligan said that she moved in with the decedent a couple of days or a week after they met. This was two or three

months before the Stop-N-Shop incident. Tr. 58, l. 6 – 59, l. 18. Milligan related the decedent was very angry because his girlfriend, Jennifer Roller, started having a sexual relationship with appellant when the decedent was sent to prison. Tr. 63, l. 8 – Tr. 64, l. 13.

Milligan remembered she was in the car with the decedent and her three children that night when the decedent decided to stop at the Stop-N-Shop. The decedent went inside while Milligan waited in the car. She saw the decedent and appellant inside were about to fight and they were “circling” while she watched from the car. Tr. 66, ll. 2-9.

Milligan then went inside the store to get the decedent out of the store and back into the car. Tr. 66, ll. 10-15. Milligan was able to get between the decedent and appellant. She got on the phone inside of the store to call 9-1-1. Tr. 66, l. 10 – Tr. 68, l. 6. Milligan testified the decedent and appellant were swinging their fists at each other at the time. Milligan was yelling into the phone at the 9-1-1 operator when she heard a gunshot. Tr. 68, ll. 1-19.

The decedent came back inside the store holding his chest while bleeding onto the floor. The surveillance tape shows the decedent walking around the store holding his chest while bleeding onto the floor. Tr. 69, ll. 5-22.

Courtney Freeman testified as a state’s witness that she also knew the decedent through Jennifer Roller. Freeman remembered one incident where appellant and the decedent got into a confrontation while appellant was in his mother’s backyard working on a car. Freeman was in the decedent’s backyard at the time. Freeman claimed during the argument that appellant picked up a pipe “or something and the decedent picked up a brick.” Freeman maintained that appellant had a gun during this incident, but his mother came outside and calmed everyone down. Tr. 86, l. 10 – Tr. 89, l. 2.

On cross-examination, Freeman said she understood the problems that developed between the decedent and appellant was “over a girl.” Tr. 91, ll. 20-25. The girl was Jennifer Roller and Freeman said Roller became sexually intimate with appellant after the decedent was sent away to prison. Tr. 94, ll. 3-21.

Robert Tryon was an investigator who took a statement from appellant hours after the shooting at 1:09 a.m. on August 22, 2017. Tr. 97, l. 19 – Tr. 99, l. 1. Tryon said that appellant told him that the decedent came into the Stop-N-Shop store and began cursing at him and threatening him. This spilled over into the parking lot and “he stated the victim coerced him and that’s why he shot him.” Tr. 99, ll. 2-12.

Tryon testified that he learned the men had been friends for ten years or more, and that after the decedent was released from prison that there were altercations between the men. However, Tryon said that appellant told him he did not see a weapon in the hands of the decedent during the altercation at the store. Tr. 100, l. 20 – Tr. 101, l. 4.

Tryon offered that he did not think that there was any actual physical contact before the shooting. Tr. 100, l. 20 – Tr. 101, l. 22. Tryon admitted that the decedent was much larger man than appellant. As seen, the decedent was six-foot one inch and two-hundred sixty pounds, while appellant was only five foot six inches and one-hundred seventy-five pounds. Tr. 109, ll. 7-17.

Tryon testified that appellant told him he was tired of being bullied by the larger decedent. Tr. 111, ll. 14-16. On cross-examination, Tryon identified a police report dated July 31, 2017 -- weeks before the shooting on August 21, 2017 -- which listed appellant as “the victim” and the decedent as the subject or suspect in the incident. Tr. 111, l. 14 – Tr. 113, l. 12.

### **Request to charge**

Defense counsel requested a jury instruction on self-defense. Tr. 196, l. 23 – Tr. 203, l. 6.

The solicitor cited State v. Lockamy, 369 S.C. 378, 631 S.E.2d 555 (2006), while urging that self-defense not be charged in this case. The judge would find Lockamy controlling. The solicitor argued that appellant did not meet the element of self-defense that he was in imminent danger, and she argued that appellant should have retreated. She maintained appellant had three opportunities to retreat before he shot the decedent that night. Tr. 197, l. 3 – Tr. 198, l. 16.

Defense counsel Smaldone noted the differences between this case and Lockamy. The defendant in Lockamy, Dana, shot his decedent brother, James, from a considerable distance -- he could not even see him when he fired his gun. James was also running away from Dana at the time. Tr. 198, l. 18 – 200, l. 22.

In addition, Defense counsel noted appellant here had repeatedly retreated from the decedent's threats of violence in the past. Appellant had even moved his place of business to avoid the threats of imminent violence from the decedent. Yet the decedent continued to pursue appellant, trying to run him "off the road" at one point. Further, appellant did not have to put himself in further danger by retreating from the decedent, and appellant was reasonable to think the decedent was armed that night. Finally, the decedent, appellant's tormentor, was a much larger man. "[S]o I think that retreat meaning as if his car is home base is a little bit shortsighted." Tr. 198, l. 18 – 200, l. 22.

The solicitor then repeated that her opinion that appellant had the opportunity to retreat. Tr. 200, l. 24 – Tr. 202, l. 4. The judge ruled that Lockamy was controlling, and he also believed appellant could have retreated. Tr. 202, ll. 5-21. The judge only charged the jury on murder and voluntary manslaughter, and not self-defense. As seen, the jury convicted appellant of voluntary manslaughter.

## **Discussion**

In State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978), our Supreme Court considered a case where ill feelings characterized the relationship between Hendrix and the decedent, Cherry. “These ill feelings produced a tension between the two that culminated in Mr. Cherry's shooting death.” 270 S.C. at 655, 244 S.E.2d at 504. During one tense moment during this ongoing trouble, Appellant Hendrix went to get his gun. State’s witnesses testified the decedent did not point his gun at Hendrix during the fatal encounter that occurred later but defense witnesses said otherwise. When the decedent got distracted, Hendrix shot him four times, killing him.

It was clear neither Hendrix nor the decedent tried to avoid an imminently fatal showdown. Our Supreme Court held that Hendrix was entitled to a directed verdict because he was acting in self-defense as a matter of law while the decedent was the aggressor. State v. Hendrix, 270 S.C. 653, 661-62, 244 S.E.2d 503, 507 (1978).

The decedent in this case terrorized appellant, and he was similarly the aggressor. This was not school yard type bullying as the solicitor urged. The decedent taunted appellant telling him in front of other people and his girlfriend, that he was going “to F your girlfriend.” The decedent had in the past pulled a gun -- a deadly weapon -- while threatening appellant. The decedent posted violent Facebook shots showing assault rifles. The decedent followed appellant when appellant sought to avoid him, and appellant thought the decedent had attempted to kill him by shooting at him from a moving truck shortly before the Stop N Shop encounter. Appellant reasonably feared eventual death or great bodily harm at the hands of the much larger violent decedent. Defense counsel correctly argued that self-defense, and the extent of retreat

necessary, especially when considering the decedent's prior threats and violent actions towards appellant, were jury questions.

“Words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense.” State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989), *citing* State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951); State v. Mason, 115 S.C. 214, 105 S.E. 286 (1920). Further, a person need not retreat if retreating may put him in greater danger of suffering serious bodily injury or being killed. State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) *citing* State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955) and State v. Hardin, 114 S.C. 280, 103 S.E. 557 (1920). Moreover, a defendant also has the right to act on appearances. State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) *citing* State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955).

Defense counsel here correctly argued the state was essentially sterilizing the facts of this case to prevent appellant from getting a self-defense instruction the true facts required. The state was ignoring the decedent's status as appellant's dangerous tormentor at the time of the Stop-N-Shop encounter.<sup>2</sup> See State v. Hendrix, 270 S.C. 653, 661-62, 244 S.E.2d 503, 507 (1978).

Defense counsel also correctly argued that it should not have been assumed that appellant had retreated to some self-haven when he reached his vehicle in the parking lot outside of the Stop-N-Shop as the solicitor contended. The decedent was parked right next to appellant as the surveillance tape showed, and appellant had reason to think the decedent was likely armed.

---

<sup>2</sup> Appellant understands that Hendrix had no duty to retreat because he was on his own property. Appellant obviously was not requesting a directed verdict of acquittal as a matter of law as in Hendrix, merely a jury instruction on self-defense. Appellant here questions the trial judge acceptance of the state's argument which resulted in the trial judge substituting his opinion on the reasonableness -- or the extent of appellant's retreat -- for that of the jury when the jury was the trier of fact and where there was the “any evidence” of self-defense necessary to submit self-defense to the jury in this case.

Prior incidences of violence and unprovoked aggression by the decedent here were relevant in determining whether appellant had a reasonable belief of imminent danger. See State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000). Appellant was reasonable to believe the much larger decedent, with his reputation for violence, and his status as a criminal recently released from prison, may have been armed that night or at a minimum had a gun in his car. Common sense respectfully dictated that if appellant turned his back on the decedent -- or tried to drive away -- he may have been shot at from behind by his nemesis given their history.

To establish self-defense, four elements must be present:

- (1) the defendant must be without fault in bringing on the difficulty;
- (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;
- (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and
- (4) the defendant had no other probable means of avoiding the danger.

State v. Day, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000).

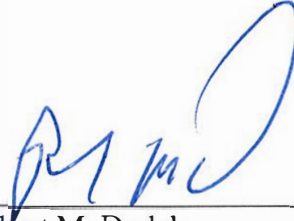
If there was any evidence from which it could have been inferred that appellant acted in self-defense, he was entitled to have the jury charged the law of self-defense, and the refusal of the trial judge to instruct on self-defense was reversible error. See State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984). The solicitor's reasoning, and the judge's acceptance of the state's

argument, that appellant was not entitled to a self-defense instruction because he could have safely left the parking lot in his car during this violent encounter -- without any fear the decedent would shoot him from behind or otherwise -- impermissibly substituted the trial court's opinion of the evidence where the jury was the trier of fact. Again, the decedent's car was right next to appellant's vehicle, and it was a jury issue if retreat -- or further retreat -- would have put appellant into further danger. State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989).

Defense counsel correctly asserted that evidence in this unusual case made self-defense a "jury question," and that State v. Lockamy was a much different case. However, the trial judge respectfully erred in finding Lockamy controlling here given its much different facts where Dana Lockamy shot at his brother from a considerable distance while his brother was running away from him. Tr. 198, l. 18 -200, l. 22. To deny appellant a self-defense instruction here given the "any evidence" standard was respectfully error, and it was reversible error. See State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008).

**CONCLUSION**

By reason of the foregoing argument, appellant's convictions should be reversed and this remanded to the Marlboro County Court of General Sessions for a new trial.



---

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of July, 2024.